



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 20, 1995

Ms. Tina Coronado
Assistant Attorney General
Transportation Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR95-1510

Dear Ms. Coronado:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31423.

You received a request for documents held by the Office of the Attorney General that pertain to an Equal Employment Opportunity Commission ("EEOC") claim made against the Texas Department of Transportation (the "department"). Representative samples of responsive documents have been submitted to this office.¹ You contend that the information at issue is excepted from disclosure pursuant to section 552.103(a) of the Government Code.

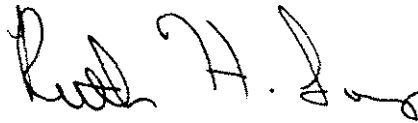
To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The information supplied shows that the requestor has filed an EEOC complaint against the department, alleging discrimination on the basis of sex, national origin, and age. The Office of the Attorney General is defending the department in regard to that complaint. You assert that the complaint is pending.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated and therefore meets the first prong of the section 552.103(a) test. Open Records Decision Nos. 386 (1983) at 2, 336 (1982) at 1. Our review of the documents at issue shows that they are related to the subject of the anticipated litigation. Because you have made the requisite showing that litigation is reasonably anticipated and that the documents at issue relate to that anticipated litigation, you may withhold the documents at issue from disclosure pursuant to section 552.103(a). We note that the applicability of section 552.103(a) ends if the other party to the anticipated litigation obtains the information or when the litigation is concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 (1982) at 3, 349 (1982) at 2.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/rho

Ref.: ID# 31423

Enclosures: Submitted documents

cc: Mr. William P. Maher
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